

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of Peter Nicholson.

Serial No.: 10/783,434

Art Unit: 3662

Filed: February 20, 2004

Examiner: Gregory C. Issing

Title: ASSISTED GLOBAL POSITIONING SYSTEM LOCATION
DETERMINATION

RESPONSE

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This paper is filed in response to the Office Action mailed April 6, 2009 for the above-identified application.

On February 10, 2009, Applicant filed a Petition to Withdraw Holding of Abandonment Based on Failure to Receive an Office Action with Exhibits A-H in support thereof and Exhibit I which was an Election/Response to a Restriction Requirement issued by the Patent Office. A true and correct copy of a transmittal accompanying Applicant's Petition is attached herewith as Exhibit A showing the Office's date stamp of February 10, 2009.

On February 24, 2009, the Office issued a decision granting Applicant's Petition. On the second page of the decision, the Office stated that "[t]he matter is being forwarded to Group Art Unit 3662 for consideration of applicant's reply to the March

21, 2006 Office action, a copy of which has been supplied with the instant petition (appearing in the Image File Wrapper as "Exhibit I"). A true and correct copy of the decision is attached herewith as Exhibit B.

At paragraph 1 of the instant Office Action, however, the Office stated that Applicant's election response was incomplete in that Applicant failed to identify the claims associated with the elected species as required. As a courtesy, Applicant attaches herewith as Exhibit C a true and correct copy of Applicant's response filed on February 10, 2009 and identified by the Office of Petitions in its decision. With reference to Exhibit C, Applicant's response met the requirements of the Office and elected Group I, Species 6 with Claims 1-32 and 38-61 readable thereon.

Consideration of Applicant's response filed February 10, 2009 and attached hereto as Exhibit C is respectfully solicited.

Respectfully submitted,

/mcc/

Mark C. Comtois
Ryan T. Hardee

Reg. No. 46,285
Reg. No. 57,515

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Dated: April 22, 2009

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of Peter NICHOLSON

Confirmation No.: 6373

Serial No.: 10/783,434

Art Unit: 3662

Filed: February 20, 2004

Examiner: Gregory C. Issing

Title: ASSISTED GLOBAL POSITIONING SYSTEM LOCATION
DETERMINATION



DOCKETED

TRANSMITTAL

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


Sir:

Transmitted herewith is a Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action and in the Alternative a Petition to Revive an Abandoned Application Under 37 C.F.R. § 1.137(a) or Under 37 C.F.R. § 1.137(b), Exhibits A – H, and Exhibit I which is an Election/Response to the Restriction Requirement dated December 27, 2005 for the above-identified application.

The Commissioner is hereby authorized and requested to charge any fees required for this Petition against Deposit Account No. 04-1679.

A duplicate of this sheet is enclosed.

Respectfully submitted,



Mark C. Comtois Reg. No. 46,285
Ryan T. Hardee Reg. No. 57,515

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Dated: February 10, 2009

EXHIBIT B



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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WASHINGTON DC 20004

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OFFICE OF PETITIONS

| | | |
|----------------------------------|---|-------------|
| In re Application of | : | |
| Peter Nicolson | : | |
| Application No. 10/783,434 | : | ON PETITION |
| Filed: February 20, 2004 | : | |
| Attorney Docket No. 920709-95578 | : | |

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative to revive under 37 CFR 1.137(a) or 1.137(b); filed February 10, 2009.

The petition is **GRANTED**.

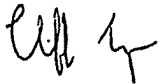
This application was held abandoned for failure to timely file a response to the non-final Office action, mailed March 21, 2006. This Office action set an extendable period for reply of one (1) month. No response having been received, the application became abandoned on April 22, 2006. A Notice of Abandonment was mailed on November 16, 2006.

It is obvious from reviewing the file that the Office action was mailed to the incorrect address. The Office action should have been addressed to the address set forth in the Power of Attorney filed on December 9, 2005. The Change of Correspondence Address, filed on February 9, 2006 should not have been entered, as it was not accompanied by a 37 CFR 3.73(b) statement.

In view thereof, **THE HOLDING OF ABANDONMENT IS WITHDRAWN.**

The matter is being forwarded to Group Art Unit 3662 for consideration of applicant's reply to the March 21, 2006 Office action, a copy of which has been supplied with the instant petition (appearing in the Image File Wrapper as "Exhibit I").

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in black ink, appearing to read 'Cliff Congo' with a stylized flourish at the end.

Cliff Congo
Petitions Attorney
Office of Petitions

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of Peter Nicholson.

Serial No.: 10/783,434

Art Unit: 3662

Filed: February 20, 2004

Examiner: Gregory C. Issing

Title: ASSISTED GLOBAL POSITIONING SYSTEM LOCATION
DETERMINATION

ELECTION

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Restriction in the Office Action dated December 27, 2005 for the above-identified application.

Claims 1-61 are pending in the application. The restriction requires election of Group I (Claims 1-32, 38-61), Group II (Claims 33-34), or Group III (Claims 35-37). The restriction further requires an election of Species 1-6.

Applicant elects Group I (Claims 1-32, 38-61).


Applicant elects Species 6 with Claims 1-32 and 38-61 readable thereon. Species 6, as indicated by the Office, is allegedly directed to the "determination of the likelihood on the basis of *a plurality of criteria selected from the group* of angle of elevation, terrain indicator, elevation model, geometrical spread, and historical data." (emphasis supplied). Applicant submits that, in view of the recitation provided by the Office,

Claims 1-32 and 38-61 may be readable on Species 6 with generic Claims 1, 16, 22, 24, 28, 38, 41, 47, and 56 included therein.

Applicant also acknowledges the Office's indication of generic Claims 1, 16, 22, 24, 28, 38, 41, 45, 47 and 56. Should any of the generic claims be allowed, Applicant notes that all species will be examined on the merits. Applicant rejects any notion that the features in the species are obvious variants of each other without any support or evidence in the record.

Reconsideration is solicited.

Respectfully submitted,



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Dated: February 10, 2009